L. A. No. 18,573

In the Supreme Court

OF THE

State of California

R. BERNARD DICKEY,
Plaintiff and Respondent,

vs.

RAISIN PRORATION ZONE No. 1, a proration zone organized under the laws of the State of California; RAISIN PRORATION ASSOCIATION (a corporation), ARTHUR C. BLAYNEY, BEN DRENTH, MELCHOIR HANSEN, BEN H. HAYES, W. K. LEE, CLARENCE WILSON, D. RAY HOAK, WILLIAM N. KEELER, E. C. SMITH, as members of the Program Committee of said Raisin Proration Zone No. 1 and as members of the Board of directors of said Raisin Proration Association, R. L. MILLER, E. H. CORNELL, A. E. GLASS, COMMODITY CREDIT CORPORATION (a corporation),
Defendants and Appellants.

RESPONDENT'S PETITION FOR A REHEARING.

To the Honorable Phil S. Gibson, Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the State of California:

The respondent petitions for a rehearing of this cause.

We do not complain of the ruling in reversal of the judgment. After study, we concede the probable soundness of the holding of the District Court of Appeal—that affirmative defenses appear which require consideration by the trial court, both as to law and fact. However, the direction by this Court to the trial court to enter a judgment dismissing the complaint is too drastic. This direction has been rested, by a four to three vote of this Court, upon the validity of the pledge transaction here involved. The latter ruling has in turn been grounded upon a supposed state of facts and conceptions of the condition of the market in raisins which the record wholly fails to warrant or sustain. The untimely manner by which this Court has undertaken to prejudge the facts will be disclosed hereinafter.

Your petitioner urges the following principal reasons for a rehearing:

I.

The majority opinion is predicated upon unsupportable and premature assumptions as to the state of the market for raisins. The majority opinion advances, in its assumption of facts, to the stage of unwarranted hypothesis. The conjecture is indulged in, that had it not been for this pledge transaction (depriving non-borrowers of their whole interests in the surplus pool) the entire market for raisins would have been demoralized. That this is a factual issue, wholly unsupported by the record, will presently be shown.

II.

When the Statute is given the meaning here adopted by the Court, a most serious question of constitutionality arises under the Constitution of the United States of America. This question of constitutionality has not been considered by the Court. It has not arisen because to date it has been primarily a question of the meaning of the Statute. The point of constitutionality has, therefore, come up but incidentally. This particular issue of constitutionality was not involved in the two cases cited by the majority opinion.

III.

In reaching the interpretation adopted in the majority opinion, no heed has been paid to precise provisions in the Statute which negative such meaning.

IV.

The theory of implied power, upon which this decision mainly rests, affords no support for the decision.

V.

The provision of the Statute as to donations to charity does not justify a holding that certain growers by this pledge device are to lose all interest in the surplus pool and that the remaining growers possess a preference.

VI.

The holding of the majority departs from well-settled principles of statutory construction.

VII.

The majority opinion is in conflict with the express provision of the Statute with respect to the costs of operation.

These grounds for a rehearing will be dealt with in the above order. For the moment, we turn to a phase of the case of which the Court may not be mindful.

The plaintiff is maintaining this suit, not as an individual, but as a member and representative of a class. This class, as the majority opinion recognizes, consists of the producers of 47.26 per cent of the raisins in the zone, harvested for market during the period here involved. These persons did not borrow upon their raisins and, for that reason alone, have, according to the majority opinion of this Court, lost all right to financial return upon their respective interests in the raisins in the surplus pool.

From the presence of but one plaintiff, the Court is, of course, not to infer that others similarly treated are not so complaining of, and do not feel aggrieved by, the confiscation of their property accomplished in the so-called marketing plan. In simplicity of procedure, the law permits one plaintiff, as a representa-

tive. The wrong here inflicted must be considered as extending throughout the 47.26 per cent ownership.

According to the biblical tenet, "the sins of the fathers are to be visited upon the children". Extending further than that is the majority decision in the case at bar. It visits upon nearly a fifty per cent ownership by an agricultural group the consequences of the financial ills of the remainder.

In order to demonstrate the error of the majority opinion, it is not necessary to show other than that this plan of pledge was illegal and unauthorized. We are not concerned with a general question as to the power to arrange for a pledge of a grower's individual interest in the surplus pool. The property was fungible. For aught that appears, such individual pledges of interest could have been arranged for, without the confiscation of the property rights of non-borrowers.

In substance, this Court has held that a race to borrow was the order of the day. Those who felt themselves not in such necessitous condition as to require a loan from Commodity Credit Corporation must, according to the decision of the majority, suffer a deprivation of interest in the surplus pool in order to replenish the loss for advancements to other growers.

This decision has been reached notwithstanding the entire absence of any language in the Statute permitting this kind of a pledge. Everyone, including the litigants and the members of this Court concedes that no such authority is to be found in any words

contained in the Statute. The conclusion reached by the majority rests mainly upon a consideration of the first section of the Statute (the preamble), plus a supposed implication of power which the author of the majority opinion draws from that declared purpose. The process by which this conclusion is reached represents an innovation in the field of statutory interpretation. A novel and most dangerous precedent is created by which extended conceptions of the general welfare operate to deprive a person of property without just, or any, compensation, and, without due, or any, process of law.

THE STATUTE.

The appropriate provisions of the

Agricultural Prorate Act of 1933; Stats. 1933, p. 1969 (as amended); Deering's Gen. Laws, 1937, Act 143a,

are fully outlined in both opinions. Summarization only is necessary here, and merely for the purpose of convenient reference.

Subdivision (1) of the Statute declares a "public interest" to prevent "chaotic economic conditions" resulting from a production of agricultural commodities in excess of current demand. The declaration of public interest extends no further.

The Act, in addition, provides for the creation of an Agricultural Prorate Commission with authority to establish proration zones and pass upon petitions

for marketing programs. (Secs. 3 and 8.) In the event of the establishment of a marketing program in a Proration Zone, such program is to be formulated by a local Program Committee. (Secs. 15 and 18.) The marketing program becomes compulsory when adopted by the Agricultural Prorate Commission. (Secs. 18, 24, 25.)

The majority opinion adds (p. 9):

> "Speaking generally, the program committee should determine the total of the regulated commodity to be produced in a crop year, the percentage of that total which can be marketed profitably in the usual and ordinary channels of trade, and the percentage which cannot be so marketed without flooding the market and breaking the market price. The percentage of the commodity which can be absorbed by the market is left under the free control of the producers, who may market and dispose of that proportion of their crops as they may please without any restrictions. The balance of the commodity which cannot be absorbed in the usual channels of trade is designated as surplus, which must be delivered to the program committee of the zone and put into a stabilization pool, where it is held, cared for and disposed of by the committee in such a manner as not to come in competition with the 'free' portion of the crop."

We add that this is far more than "speaking generally". The above is a precise enumeration of the factors to be considered by the program committee. (Sec. 19.1.)

THE GROUNDS ASSIGNED BY THE MAJORITY OPINION AS A BASIS FOR THE DECISION.

As we read the prevailing opinion, it rests upon two grounds: (1) the hypothecation by those in need of money plus the pledge of the whole surplus pool prevented a break in the market for raisins and hence was for the advantage of those who did not borrow and therefore was for the "general welfare", and (2) the provision for a possible donation to charity demonstrates that no one had a vested interest in the surplus pool. The remainder of this petition devotes attention to both grounds.

ARGUMENT.

I.

THE MAJORITY OPINION RESTS UPON ISSUES OF FACT WHICH NOT YET ARE ESTABLISHED BY THE RECORD AND WHICH SHOULD BE DETERMINED BY THE TRIAL COURT.

At the inception of this petition, we call attention to the premature adjudication upon the facts which the decision of the majority accomplishes. Unwittingly this Court has assumed a capacity to predict as to market conditions which exceeds the ability of any skilled market speculator. This Court has announced that if a scheme of advancement to those ready of foot to procure loans had not been adopted the entire raisin market would have been demoralized. Upon that postulate, the Court has concluded that the pledge plan was for the benefit of all raisin growers in main-

taining prices, even though certain of them did not see fit to borrow.

Upon what basis has the Court reached this conclusion? We find nothing in the record to support it.

There can be no doubt that the Court may take judicial knowledge of the distressed condition of the raisin growers in past years. It by no means follows that the Court is to uphold a plan by which interests in the pool—declared by Statute—are to be destroyed. We are prepared to show that the withholding of a certain percentage of the crop is sufficient to create a stable and fair market. **Such withholding plan is all the Statute provides for or contemplates.**

This Court is in no position to say what would have happened to the raisin market, had the arrangement for marketing progressed no further than the language of the Statute, in the withholding of the declared surplus. This Court, likewise, is in no position to say that if the pledge had been restricted to the respective interests in the surplus pool of those incurring loans, the sought-for result of the stabilization of the market would not have been accomplished.

In short, this Court has held that the constitutional basis for this pledge arrangement lies in a certain state of facts as to the raisin market. The plaintiff desires to tender issue as to those facts. The plaintiff is prepared to prove that the very factor of withdrawal from the market the surplus supply itself stabilizes and creates a fair price.

It follows that the plaintiff instead of suffering the dismissal of his complaint, should have the opportunity to meet the assertions as to the facts.

The author of the majority opinion recites that benefits inured to all growers as shown by "the record". (Opinion, bottom of p. 18.) The record here consists of the pleadings. The Court has apparently accepted as true various allegations and conclusions incorporated in the answer of defendant Commodity Credit Corporation. It works manifest injustice to the plaintiff and those he represents for the Court to accept as true the allegations and conclusions of the answer of a defendant on issuable facts. Here, the Court has gone even beyond that and has not only accepted them as being true but by its decision has precluded and barred plaintiff from proving their falsity, and has reached an interpretation based upon those issues of fact.

II.

THE STATUTE, AS INTERPRETED AND APPLIED BY THE COURT, IS UNCONSTITUTIONAL AND VOID BY REASON OF THE PROVISIONS OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Heretofore in this litigation, the question has been restricted to the meaning of the Statute. Inasmuch as the Court has held that a grower may be deprived of his interest in the surplus pool—notwithstanding the precise provision of the Statute that the program committee "shall handle all commodities received by

a surplus pool and account for the same on a pooled basis" Sec. 19 (1) (b)—it must be obvious that the plaintiff and those of his class have been deprived of their property without due, or any, process of law, and in denial of the equal protection of the law.

Constitution of the United States, Amendment XIV.

Surely, it cannot be argued that compensation is afforded and due process accomplished upon these nebulous benefits in the upholding of the market price, when the Act, in precise terms, compels the program committee to account to all contributors "on a pooled basis". What has become of the plaintiff's interest and those of his class of fellow-contributors to the pool? Has it been due process to destroy their property by a transaction appropriately described in the majority opinion as a matter of "private determination"?

At the inception of the opinion of the majority, two cases,

Agricultural Prorate Commission of California v. Superior Court, 5 Cal. (2d) 550,

and

Parker v. Brown, 317 U. S. 341, 87 L. Ed. 315,

are cited. Each case involves the validity of the provisions of the Act which provide for the creation of a surplus pool. Neither case involves a pledge of the whole or any part of the surplus pool, and therefore are of no significance here.

It is important to note the precise ground upon which the authority to establish a surplus pool was held constitutional in

Agricultural Prorate Commission v. Superior Court (Supra), 5 Cal. (2d) 550.

There, the Court said (top of p. 573):

> "No claim is made, however, that the act, as it is enforced through the program instituted by the committee will not act equally and impartially upon all producers of lemons grown in the state and that if there is any benefit to be derived from the observance of the program by the growers such benefit will be enjoyed ratably by all. Nor is it questioned that if any detriment is sustained by a compliance with the terms of the act, such burden or detriment will rest equally upon all lemon growers in proportion to the amount of lemons which each grower produces."

How extreme in contrast is that language to the result eventuating in the case at bar! Here, all producers are not treated alike. Persons less acquisitive than those who recognized Santa Claus find that their interests in the surplus pool have vanished in a contribution to the "general welfare".

Within the limited time afforded for the preparation of this petition, it is impossible to present at any length a discussion of constitutionality if the meaning now found by the court is to stand. We urge that a rehearing be granted to permit a thorough presentation of this point.

II.

THE MEANING OF THE STATUTE, DETERMINED UPON IN THE MAJORITY OPINION, IS AN ABSOLUTE CONTRADICTION OF THE PLAIN WORDS OF THE LAW.

We place emphasis upon the reference by Mr. Justice Schauer, in his dissenting opinion, to that portion of the Statute which provides that

> "Each producer delivering his surplus to a pool shall be credited for his proportionate share of the surplus so delivered * * *"

and to that further portion of the Statute which provides that

> "The program committee shall handle all commodities received by a surplus pool and account for the same on a pooled basis." (Emphasis added.)

It cannot be denied that the majority opinion directly holds that the pool need not be accounted for to contributing producers. We fail to find any discussion in the majority opinion of these portions of the Statute. The interpretation at which the members in majority have arrived cannot be reconciled with the foregoing precise language of the Statute.

The Court has not only read into the Statute something that is not there, but has gone further; it has declared an implied power which is directly opposed to the precise and unmistakable wording of the Statute. The course here taken is in conflict with the elementary rule so frequently reiterated in the authorities.

San Francisco v. Mooney, 106 Cal. 586, 588:

"This is a legislative act, and is to be interpreted according to the intention of the legislature upon its face. Every technical rule as to the construction or force of the particular terms must yield to the clear expression of the paramount will of the legislature."

In accord:

23 *Cal. Jur.,* Secs. 108 and 109, pp. 727 and 730 (and authorities therein cited).

The interpretation here adopted by the majority of the Court does violence to the expressed intent and object of the Statute in still further respects. If general authority to pledge all of the surplus is to be read into the law, what assurance is there that, as a result of future transactions, the commodity designed to be withheld in appropriate portion and for a necessary length of time will not be dumped upon the market in foreclosure of the pledge with ruinous results to growers. The instant decision gives carte blanche in the creation of a pledge of the whole surplus pool without restriction as to terms and without limitation in dealing only with governmental agencies. Such restrictions cannot be conceived, because the Statute contains no provisions whatever upon the subject of pledge.

These considerations light the danger signal. They point to the consequences of the judicial legislation here indulged in by the majority opinion.

As Mr. Justice Schauer points out (bottom of p. 4), the effect of this decision permits the surplus crop to enter the market in direct competition with the "free" crop—the very thing which the law seeks to void.

IV.

THE IMPLICATION OF POWER TO CREATE THIS EXTENT OF PLEDGE IS UNJUSTIFIED.

The principal line of reasoning adopted by the majority decision is expressed at the bottom of page 20 of the official opinion. It is there ruled that "* * * government officials may exercise such additional powers as are necessary for the due and efficient administration of powers expressly granted by statute, or as *may fairly be implied* from the statute granting the powers." (Emphasis is that of the author of the majority opinion).

We have heretofore demonstrated that, in light of the clear and unambiguous wording of the Statute, it cannot logically be held that a power **directly opposed to the express language of the Statute** can "fairly be implied".

We have carefully examined the authorities cited by the author of the majority opinion at the point just indicated. All of these cases deal with implied powers essential to the proper exercise of power expressly granted. For example, the rule was thus confined in *Crawford v. Imperial Irrigation District,* 200 Cal. 318, 334 (quoted from in the opinion), where the doctrine at the foundation of the decision was stated in this restricted and limited manner:

> "A public officer or board has not only the powers expressly enumerated by law, but also those implied powers which are necessary to the exercise of the powers expressly granted." (Emphasis ours.)

We are confident that a further examination of these authorities by those participating in the majority opinion will establish that the cases cited do not sustain the holding of this Court. It certainly cannot be said in the case at bar that the power to create this extended pledge is to be implied as a necessary incident to the express powers conferred by the Statute. The latter are confined to the creation and maintenance of a surplus pool. It cannot be doubted that the legislature had only this in mind to enact as law and intended to go no further.

Heretofore, it has always been the rule that courts will not read into a Statute words that are not there and will not indulge in judicial legislation.

> *Christophel v. Riley,* 206 Cal. 242, 245 (middle):
> "While this court will go to all reasonable lengths in interpreting the powers vested by the legislature in the ministerial officers of the state, in order to give effect to the laws and so serve the ends of justice, it will not by construction confer upon such officers authority which the legislature has seen fit to withhold."

The above doctrine is sustained by numerous other authorities.

> *Allyne v. Murasky,* 200 Cal. 661;
> 23 *Cal. Jur.* 730, Sec. 109;
> Respondent's Brief, pp. 33-39.

V.

THE AUTHORIZATION OF A DONATION TO CHARITY DOES NOT JUSTIFY THE HOLDING IN THE CASE AT BAR.

As we have noted, one of the principal grounds for the decision is that no substantial interest is possessed by the plaintiff and those of his class because his rights could have been extinguished, under the language of the Statute, by a donation to charity. (Opinion, top of p. 20). These clauses are, of course, not here directly involved. They would appear of doubtful validity. Until their legality is established, a resort to these provisions is of small force.

In any event, the primary answer is that where a gift to charity occurs, all growers are treated alike. The plaintiff's cause of action here rests upon the taking of his property for the benefit of other growers —and the discrimination against him in favor of other growers. The reference to outright gifts to charity, which might occur in other instances, therefore does not meet the issue.

If the reasoning of this Court be followed to its logical conclusion, it would appear that this Court would have to confirm any donation to charity which undertakes to give away the interests of certain specifically named growers. Would not this Court possess the most extreme doubt of the validity of such transaction? And yet, if the reasoning of this Court be sound, such an arrangement would have to be confirmed. We therefore submit that this portion of the majority opinion affords no sound basis for the decision.

VI.

THE HOLDING IS IN CONFLICT WITH WELL SETTLED RULES OF STATUTORY CONSTRUCTION.

The Statute purports to enumerate the powers of the Program Committee. It is well-settled that under such circumstances these powers are exclusive. As noted by Mr. Justice Schauer, where (as here) a statute is creative a specification of powers demonstrates an intent not to establish any others. Authorities so holding are set forth at the middle of page 3 of the dissenting opinion. We ask the most careful consideration of these cases as they include several decisions not mentioned in our brief and possibly not yet examined by those participating in the majority opinion. This Statute is creative in the sense that it gives birth to an entirely new rule of law with reference to agricultural products and is in derogation of the common law.

In such an important claimed power as the ability to hypothecate in such manner as to deprive a non-borrower of his whole interest in the surplus pool, is it conceivable that the legislature intended to confer it by implication? And if that question, as we believe it must, is to be answered in the negative, it inevitably follows that the majority opinion does nothing else than extend the law by the process of judicial legislation.

There is no need to repeat the material incorporated in our brief. We desire, however, again to refer to the various canons of instruction there set forth. (pp.

33-60). We submit that the instant ruling is violative of every one of them.

In this respect, an outstanding error of the majority opinion is in turning to the preamble from which to add a power not expressly enumerated. The true rule is that this is not a correct method of determining the meaning of a statute. If this were the proper manner of approach, statutes, through generality of language in the introductory portion, could be boundlessly extended and would be uncertain in meaning to an unlimited extent. The enacting clauses control and are not to be extended by the preamble or the declaration of purposes or objects. Authorities to this effect are cited at page 53 of our brief.

VII.

THE MAJORITY OPINION DEPARTS FROM THE EXPRESS PROVISIONS OF THE STATUTE WITH RESPECT TO THE COSTS OF OPERATION.

In still a further respect, the majority opinion does violence to the exact words of the Statute. That opinion expressly rules that the expenses incurred in the handling and storage of the pooled raisins necessarily comprehended losses on the pledges here made on nonrecourse notes as a cost of operation.

As Mr. Justice Schauer points out at the inception of the dissenting opinion, the Statute contains express provisions as to the meeting of costs of operation. These are to be met by fees from the issuance of certificates. (Secs. 19.1, 20 and 21).

Inasmuch as there is no attempt in the majority opinion to dispose of the sections of the Statute just cited, we rest upon the discussion of this subject in the dissenting opinion.

This case involves issues of vast importance, some of which (concerning constitutionality) have not yet been fully presented to the Court. It has been decided by the narrow margin of one vote. Even if this petition has not changed the attitude of a single member joining in the decision, it can doubtless be said by any one of those members of the Court that the questions are so highly doubtful of solution as to call for further consideration by this Court. As a final reason for a rehearing, the Court will realize that it has mistakenly assumed the existence of a state of facts not shown by the record and which the plaintiff should be permitted to dispute and disprove.

We urge that a rehearing be granted.

Dated, San Francisco,
September 15, 1944.

Respectfully submitted,
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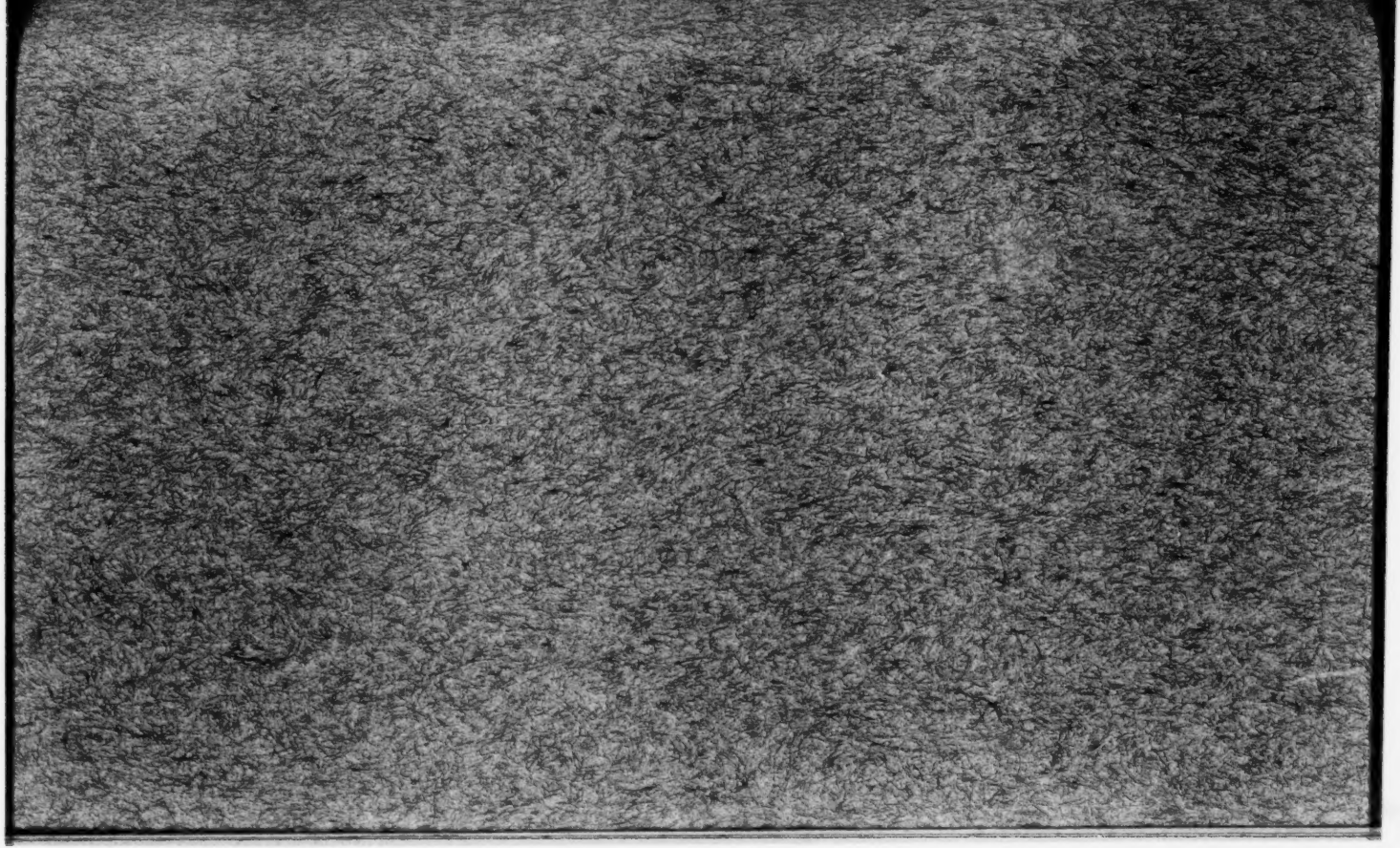

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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 966

R. BERNARD DICKEY, PETITIONER

v.

RAISIN PRORATION ZONE NO. 1, RAISIN PRORATION ASSOCIATION, ARTHUR C. BLAYNEY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

BRIEF FOR THE RESPONDENT COMMODITY CREDIT CORPORATION

OPINIONS BELOW

The Superior Court of Fresno County, California, did not render an opinion. The opinion of the District Court of Appeal (Fourth Appellate District) of California, not contained in the record, is reported in 140 Pac. 2d 53. The opinion of the Supreme Court of California en banc (R. 99–120) is reported in 24 A. C. (Cal.) 791.

JURISDICTION

The opinion of the Supreme Court of California en banc was filed on August 31, 1944 (R.

99–120). A petition for rehearing, filed on September 15, 1944 (R. 120–125), was denied by the court by an order filed on September 28, 1944 (R. 125). The time within which to file a petition for a writ of certiorari was extended by orders of Mr. Justice Douglas to and including February 20, 1945 (R. 125, 126, 127). The petition for a writ of certiorari was filed on February 20, 1945. The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the pledge agreement involved in this proceeding, whereby raisins delivered into a Surplus Pool under the provisions of the California Agricultural Proration Act of 1933 were hypothecated to secure nonrecourse loans made available to any raisin grower contributing to the Surplus Pool, violated the due process or equal protection clauses of the Fourteenth Amendment to the Constitution as to nonborrowing growers who had been required to deliver raisins into the Surplus Pool.

STATUTE INVOLVED

The applicable portions of the California Agricultural Proration Act of 1933, as amended, are set forth in the Appendix, *infra*, pp. 16–26.

STATEMENT

The petitioner is a California raisin grower located within Raisin Proration Zone No. 1, an

area designated, pursuant to the provisions of the California Agricultural Proration Act of 1933, as amended. By resolution of the Program Committee for the Zone (R. 40–41), adopted under the authority of the Proration Act on September 12, 1938, the petitioner and all other raisin growers in the Zone were required to deliver 20 per cent of their 1938 production of raisins into a Surplus Pool for the purpose of stabilizing market conditions in the raisin industry and insuring reasonable prices to such producers for the remainder, or "free tonnage", of their production (R. 40).[1]

To aid in the effectuation of these purposes, the Program Committee for the Zone, the Raisin Proration Association, and the Commodity Credit Association, an agency of the United States, executed a pledge agreement on October 15, 1938 (R. 41, 43), whereby the Commodity Credit Corporation agreed in pursuance of a resolution earlier adopted by it (R. 44–52) to advance a fund not exceeding $9,000,000 to be made available to all Zone raisin growers in the form of non-

[1] In *Parker* v. *Brown*, 317 U. S. 341, this Court considered in some detail the operation of the raisin industry and the history and provisions of the Proration Act as applied thereto in sustaining the Act against contentions that it was rendered invalid by certain federal legislation or the commerce clause of the Constitution. The Act's constitutionality under both federal and state constitutions was sustained by the California Supreme Court in *Agricultural Prorate Commission* v. *Superior Court*, 5 Cal. 2d 550, 55 Pac. 2d 495.

recourse loans on their free tonnages at a fixed price of $50 per ton, on condition that the Zone hypothecate the raisins in the Surplus Pool as part security for the nonrecourse loans. Subsequently, growers representing 52.74 per cent of the Zone's 1938 raisin production obtained such nonrecourse loans (R. 81). In amount, the loans approximated $3,000,000 (R. 34).

On March 21, 1940, the petitioner, a nonborrower, instituted this proceeding in the Superior Court of Fresno County, California, on behalf of himself and all other growers "similarly situated", against the Zone, its officials, the Commodity Credit Corporation and certain other parties, some of whom were subsequently dismissed as defendants to the suit (R. 77–78). Petitioner's complaint (R. 1–10) set out the delivery of 20 per cent of the 1938 raisin production of each individual grower into the Surplus Pool, and the hypothecation of this pool to secure the Commodity Credit Coporation's nonrecourse loans on free tonnage raisins. The complaint further alleged in substance that petitioner and his co-contributors to the Surplus Pool "were and are the beneficial co-owners of the raisins, and other assets, of said Stabilization [Surplus] Pool" (R. 4), and that the pledge agreement with the Commodity Credit Corporation constituted an "illegal and unauthorized effort and plan to deprive plaintiff and the other beneficial owners of said pool of their property and rights as aforesaid" (R. 8).

Finally, the complaint alleged that neither petitioner nor those he claimed to represent in his action had consented to or ratified the pledge agreement; that a number of Surplus Pool raisins had been sold by the Zone and the proceeds paid over to the Commodity Credit Corporation to be applied on account of the nonrecourse loans; that a sale of the remaining surplus raisins was imminent; and that the amounts so realized would have to be applied, under the allegedly illegal pledge agreement, to make the Commodity Credit Corporation whole for large losses sustained on the nonrecourse loans (R. 7). There is no allegation in the complaint that the execution or enforcement of the pledge agreement invaded or would invade petitioner's constitutional rights under any part of the federal or state Constitution.

The complaint prayed that the court declare the pledge agreement illegal and void; that it enjoin the defendants from disposing of surplus pool raisins or proceeds from the sale thereof to the Commodity Credit Corporation; for an accounting and the appointment of a receiver; and for attorneys' fees (R. 8–10).

The Commodity Credit Corporation, Raisin Proration Zone No. 1, and the other defendants filed demurrers to petitioner's complaint (R. 10–24) which were overruled by the Superior Court of Fresno County on March 5, 1941 (R. 24). Thereupon the defendant Commodity Credit Corporation on June 19, 1941, and certain other